IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL APPEAL NO. 55 OF 2003.

Shri Mahesh Subashchandra Sindagi,
Service, resident of
B-4, Type II, Second Floor,
Telecom Quarters, Mapusa. ..... Appellant/
Orig.Accused.

VERSUS

1. STATE,
Through Public Prosecutor.

2. Central Bureau of Investigation,
Altinho, Panaji, Goa. .... Respondents/
Orig.Complainant

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Shri Sudhir Shah, Advocate for the Appellant.

Shri Joseph Vaz, Special Public Prosecutor for the Respondent No.2.

CORAM: N. A. BRITTO, J.

DATE OF RESERVING THE JUDGMENT: 27.08.2004
DATE OF PRONOUNCING THE JUDGMENT: 09.09.2004

J U D G M E N T:

The appellant herein, a Junior Telecom Officer, working at the relevant time at the Calangute Telephone Exchange, has been tried, convicted and sentenced by the learned Special Judge, under Sections 7 and 13(2) r/w 13(1)(d) of the Prevention of Corruption Act 1988 (Act, for short). The accused has been sentenced under S.7 of the Act to undergo R.I. for six months and to pay a fine of Rs.1000/- in default to suffer S.I. for one year; under Section 13(2) of the Act to

undergo R.I. For one year and to pay a fine of Rs.2000/- and in default to suffer S.I. for two months; both the sentences having been ordered to run concurrently.

2. The appellant (accused, for short) has filed the present appeal against the said judgment and order of the learned Special Judge dated 26/28.8.2003.

3. The facts of the case of the prosecution, broadly stated, are that P.W.1 Francis M. D'Souza had changed his residence from Saligao to Calangute and had applied on or about 6.4.1999 for shifting of his telephone No.278438 from Saligao to Calangute. Approval for shifting of the same was given by P.W.4 Naik, the S.D.E. ,on or about 5.5.1999 when the said P.W.1 Francis brought the necessary papers for approval for the said shifting. The said papers were handed over by the said P.W.1 Francis to one Mrs. Remedios at Calangute who told P.W.1 Francis that the work of shifting would take about two weeks and when P.W.1 Francis told the said Mrs. Remedios that he was in urgent need of the said telephone, Mrs. Remedios told P.W.1 Francis that all the relevant papers regarding the shifting were handed over to the accused and it was for him to take further action in the matter. P.W.1 Francis thereafter contacted the accused who told him that there were no spare lines to give connection to him, but that he would do his best to shift the telephone as early as possible.

4. On 25.6.99 P.W.1 Francis contacted the accused regarding the shifting of the said telephone and on the same day the accused is stated to have come to the house of P.W.1 Francis at about 1 p.m. Then P.W.1 Francis took the accused for lunch and at that time the accused told P.W.1 Francis in case he was paid some money he would be able to give the connection quickly and when P.W.1 Francis asked how much it was, the accused told him that it would be Rs.3000/- in addition to Rs.150/- to Rs.200/- to be paid to the Lineman and promised P.W.1 Francis to give the connection on 28.6.99.

5. As the connection was not given on 28.6.99, as promised, P.W.1 Francis spoke to the accused on phone and the accused replied that there were no additional lines and that there was also shortage of staff to do the work and in order to verify whether the accused was telling the truth, P.W.1 Francis contacted the local Lineman who told him that additional lines were available and it was for the accused (JTO) to do the necessary work.

6. On 29.6.99 P.W.1 Francis got in touch with the Police in the Crime Branch, Panaji and then with the C.B.I. and went there and met the Dy.S.P. Shri Kurtorkar and lodged his complaint. A raid was organised after following the necessary procedures and then P.W.1 Francis along with Anand Naik (P.W.2) came to the residence of P.W.1

Francis at Calangute as the accused was supposed to come to the house of P.W.1 Francis at about 1.30 p.m. on 29.6.99. However the accused did not turn up and P.W.1 Francis gave a ring to the accused and the accused told him that he was held up and could not come on that day but he would come on the next day at about 1 p.m. So P.W.1 Francis along with the raiding party returned to the office of C.B.I. where P.W.1 Francis returned the amount of Rs.2000/- which was kept ready to be paid to the accused. The said amount of Rs.2000/- was brought down from Rs.3000/- by P.W.1 Francis by negotiating with the accused.

7. On 30.6.99 P.W.1 Francis spoke to the accused from the shop of one Alfran and the conversation between P.W.1 Francis and the accused is said to have been tape-recorded and after confirming that the accused would come to the house of P.W.1 the C.B.I. arranged for an audio and video recording. The accused came to the residence of P.W.1 Francis between 1.30 to 2.00 p.m. and as soon as the accused was spotted near the compound gate, the audio and video systems were switched on and the raiding party members hid themselves in the bedroom of the house of P.W.1 Francis. P.W.1 Francis introduced P.W.2 Naik to the accused as his friend who was interested in opening a S.T.D. booth in the name of his wife and after having asked the accused whether P.w.1 Francis would get the connection passed, P.W.1 handed over Rs.2000/- to the accused which he was carrying in

his T-shirt pocket. The accused took the amount in his left hand and held it in his hand for about 2 or 3 minutes and at the same time told P.W.1 Francis that he should not think that he was taking it forcibly and if he thought so, he would return it and that he did not want any complaint to be made later on. P.W.1 Francis admitted that the accused about four times wanted to return the money to P.W.1 Francis stating that he should pay later and that P.W.1 would tell that the accused had taken money for giving connection. At that point of time P.W.1 Francis gave the pre-arranged signal and the accused was caught with Rs.2000/- in his hand and thereafter other procedure followed.

8. The accused when examined under S.313 of the Code of Criminal Procedure, 1973 denied the entire case of the prosecution as false and stated that he had not demanded any bribe nor accepted any. However, the accused also filed a separate statement purporting to be under S.313 of the Code and in the said statement, the accused, inter alia, stated that between 5.5.99 and 30.6.99 P.W.1 Francis had visited him many times. The accused stated that there was no free tag available and P.W.1 Francis was informed about it. The accused stated that he was on leave from 30.5.99 to 14.6.99 and he had gone to Sholapur to collect money from his friends and relatives to purchase a Hero Honda motorcycle whose cost was Rs.46,000/-, but he could collect only Rs.41,000/-. The accused

stated that he had met P.W.1 Francis thereafter who had asked him the purpose of his leave and on being told that he had gone to Sholapur for collecting loan for the motorcycle, P.W.1 Francis volunteered to give him Rs.2000/- and though he was avoiding to take the loan from him, P.W.1 Francis repeatedly asked him to come to his residence and collect the loan of Rs.2000/-. The accused admitted having received the phone call on 30.6.99 from P.W.1 Francis calling him to his residence which he agreed and as soon as he entered the house of P.W.1 Francis and sat on the sofa P.W.1 Francis gave him Rs.2000/- which he held in his hand, but not in his pocket because he was not interested to take it from him but P.W.1 Francis did not accept it from him and that he had made it clear to P.W.1 Francis that the receipt of the said money had nothing to do with the connection work. The accused stated that he was not demanding or accepting any bribe.

9. Admittedly a very thin line differentiates the case of the prosecution from the case of the accused.

10. The prosecution examined in support of its case, ten witnesses. The accused examined none. It has been submitted on behalf of the prosecution that their case is proved beyond reasonable doubt without the aid of evidence of audio and video tapes.

11. In fact, the limited question for determination is whether the explanation given by the accused is at all plausible on the face of the evidence led by the prosecution and the presumption available to the prosecution under S.20 of the Prevention of Corruption Act ?

12. The learned Special Judge by queer process of reasoning has not accepted the case of the prosecution and yet has convicted and sentenced the accused based on the said presumption. For example, the learned Special Judge concluded that the prosecution had failed to prove that the accused had demanded a bribe and further held that the complainant (P.W.1 Francis) had not come out with the truth as far as the demand for bribe made by the accused was concerned.

13. The learned Special Judge further held that P.W.1 Francis had made substantial improvements in his case to make it appear that the accused had demanded the bribe. In my view none of the said conclusions were really justified.

14. The complainant (P.W.1 Francis) had categorically stated that on 25.6.99 he contacted the accused and asked him about shifting his telephone and on the same day, at about 1.00 p.m., the accused came to his house and he took the accused for lunch and after the lunch the accused told him that if some money was paid to him he would be able to quicken the connection and when asked how much

that would be, the accused told him that he should pay to the accused Rs.3000/- and in addition Rs.150/- to Rs.200/- to be paid to the Lineman and promised him that the connection would be given on 28.6.99, and, on 28.6.99 when he inquired with the accused, the accused replied that there were no additional lines and there was also shortage of staff to do the said work and in order to verify whether the accused was telling the truth, he had contacted the Lineman of the area, who had told him that additional lines were available and it was for the accused to do the necessary work. P.W. 1 Francis, in his cross-examination had stated that on 25.6.99 they were together for about 40 minutes and that the accused had opened the topic during lunchtime. It may be true that P.W.1 Francis might have stated in his complaint – Exh.30 that after lunch, the accused spoke to him regarding the telephone connection and told him that if he was willing to pay money then he would give the connection to him by Monday, 28th June, 1999. Whether the said demand was met by the accused prior to lunch or during lunch or after lunch, would have been immaterial as long as the said demand was made by the accused on 25.6.99 when the accused volunteered to go for lunch with P.W.1 Francis. P.W.1 Francis had further stated that he had negotiated with the accused, at the instructions of the C.B.I. Officer, that the amount of bribe be brought down from Rs.3000/- to Rs.2000/-, and, this could be only on 29.6.99 when P.W. 1 Francis went to the C.B.I. Office. On this aspect P.W. 1 Francis was sufficiently

supported by P.W.2 Anand Naik who was a Bank Officer for the Corporation Bank. Both have stated that P.W.1 Francis phoned the accused from the office of C.B.I. on 29.6.99 and this could have been only before they proceeded for the raid. P.W.1 Francis has also stated that at the instructions of C.B.I. he negotiated with the accused and the amount was brought down from Rs.3000/- to Rs.2000/-. This statement is supported by P.W.2 Anand by stating that the Complainant had bargained for the bribe amount, stating that the amount should be reduced from Rs.3000/- to Rs.2000/- and in reply the person speaking on the other side had said o.k. This could have been only before they proceeded for the raid and not after return on 29.6.99 in the afternoon as otherwise stated by P.W.2 Anand. These facts stated by the witnesses, clearly showed that the demand by the accused was made on 25.6.99 and the amount was reduced to Rs.2000/- on 29.6.99. The facts stated by the aforesaid two witnesses ought to have been considered in their proper perspective and could not have been simply brushed aside as done by the learned Special Judge. P.W.1 Francis might have stated at one stage that on demand made by the accused he handed over the amount of Rs.2000/- to the accused and at another stage that he handed over the amount of Rs.2000/- to the accused on his own without the accused making a demand for it. However, P.W.1 Francis when questioned that the accused had not made a demand on 30.6.99 when the accused came to his residence, at 1.00 p.m., had stated that that was possible, but

the demand was made earlier on 25.6.99 during their lunch episode. Likewise, there might have been some mixing up of the sequence of events as to when they took place. The accused was certainly not required to give all details in his complaint. For example, it was not necessary for the accused to have stated in his complaint about his meeting Mrs. Remedios and asking her how much time would be taken to shift the telephone and she having told him that it would take about two weeks. Similarly, it was not necessary for P.W.1 Francis to have mentioned in his complaint that he had told Mrs. Remedios that he was in urgent need of telephone connection as his children were residing in Canada. These were but little details which P.W.1 Francis was not at all required to mention in his said complaint given to C.B.I. In the same manner, P.W.1 Francis might have forgotten to mention in his complaint that he had spoken to the accused on phone on 28.6.99 to inquire about his connection. P.W.1 Francis might have also not stated in his statement recorded subsequently on 7.7.99 that he had asked the accused whether he was making money like this from others, to which the accused replied in the affirmative stating that he accepts money in some cases. These were but matters of detail which do not at all affect the credibility of P.W.1 Francis. The facts stated by P.W.1 Francis and corroborated by P.W.2 Anand Naik as well as P.W.9 Chonkar could not have been brushed aside as sought to be done by the learned Special Judge.

15. Some of the submissions made on behalf of the accused have also been advanced before this Court. Shir Sudhir Shah, the learned counsel of the accused has submitted that there was no demand made by the accused on the day the accused was caught with Rs.2000/- in his hand. Shri Shah has submitted that the genesis of the entire story given by P.W.1 Francis does not appear to be credible and therefore P.W.1 Francis cannot be believed. In support of this submission, Shri Shah has placed reliance on the case of **Moti Ram Jai Singh Pawar v. The State of Maharashtra** (1985 (2) Crimes, 18) and **Chaturdas Bhagwandas Patel v. The State of Gujarat** (1976 Cri.L.J. 1180).

16. In the case of **Moti Ram Singh (supra)** it was stated by this Court that in the matter of trap cases, particularly when the initial part or the genesis of the story of demand and negotiations is found to be untrustworthy, then the entire prosecution case must fail for the simple reason that the testimony of the complainant by itself can never be accepted, because a complainant in such anti-corruption cases is the bribe giver and is an accomplice to the offence of illegal gratification. And his evidence , therefore, must be scrutinised with great caution and if the major part of the version given by him is found to be false, there is no reason why the remaining part of his version should be accepted. In the case of **Chaturdas Bhagwandas**

Patel (supra) the Supreme Court had observed that the High Court having disbelieved a part of the prosecution case, which according to the prosecution, was the genesis of the case, the High Court could not reasonably proceed on what was left of the prosecution case to affirm the order of conviction passed by the High Court. In my opinion, the observations in the aforesaid two cases are not at all attracted to the case at hand. P.W.1 Francis had applied for the shifting of his telephone and had patiently waited for almost two months for the said shifting and then had even given a lunch to the accused possibly to make things easy for him, during which time the accused made the said demand in order to hasten the process of shifting the telephone. In this case no part of the story given by P.W.1 Francis can be considered to be false. He has only at times mixed up the sequence of facts. **He could not even be accused of improving his story substantially. As already stated, the version given by** P.W.1 Francis to a great extent was corroborated by P.W.2 Naik as well as P.W.9 Chonkar and therefore there was no reason for the learned Special Judge not to accept the story about the demand having been made by the accused for the said bribe on 25.6.99.

17. The second submission made by Shri Shah, the learned counsel is that the trap having admittedly failed on 29.6.99, P.W.1 Francis had to lodge a fresh complaint and in support of the said submission, Shri Shah has placed reliance on the case of **Vishnu Kondaji Jadhav v.**

State of Maharashtra (1994 Cri.L.J. 1579). In this case the question which was raised was whether a trap which was laid by Inspector Mukim without the permission of the Judicial Magistrate was in accordance with the provisions of S.5A of the Prevention of Corruption Act, 1947. The Supreme Court answered the said question by stating that the demand for money was made on three different dates, namely on 13.5.1975, 20.6.1975 and 5.7.1975 and each demand constituted an offence by itself to investigate which permission for investigation was necessary under S.5A of the Act. Each investigation in the circumstances constituted an independent investigation into an independent offence and therefore it was necessary to take a separate and independent permission from the Magistrate which was admittedly not done and since the provisions of S.5A relating to the obtaining of the permission from the Magistrate are mandatory before investigation is launched into the offence, the appellant was entitled to succeed. In my view the said observations of the Hon'ble Supreme Court are not at all attracted to the facts of the case at hand. In the case at hand the demand was only made once i.e. on 25.6.99 and the amount was reduced upon negotiation on 29.6.99 and was actually paid to the accused on 30.6.99. It has been rightly held by the learned Special Judge that this case has no application to the case at hand. Criminal law is put in motion but once, then it has to take its own course.

18. Shri Shah has also submitted that there was reverse motive in this case. It is his submission that the complainant – P.W.1 Francis thought that he would get a connection by making a complaint and in fact, he was given one on 5.7.99 by disconnecting the connection of one Jenifer Mendes. On this aspect the complainant was not cross-examined on behalf of the accused and the learned Special Judge has accepted the said submission stating that there was reverse motive for the complainant to file a complaint against the accused. The learned Special Judge has observed that the records show that the telephone connection of one Jenifer Mendes was disconnected and the same was given to the complainant on 5.7.99. However, I am unable to agree with the said findings. P.W.4 Vinod Naik who is the S.D.E. stated that it was the duty of the accused to have completed the work of giving connection within seven days after shifting order was signed by him which he did on 5.5.99, but the accused did not shift the telephone nor submitted any report to him expressing any difficulty to complete the work. P.W.4 Naik denied that during the period from May to July, 1999 about 600 connections were defective. He also denied the suggestion that the accused and the complainant had both contacted him and told him that it was not possible to give a connection to the complainant immediately. He stated that after the accused was arrested on 30.6.99 the C.B.I. Officers asked him whether it was possible to give connection to the complainant and he directed Shri Dhube the J.T.O. to give a telephone connection to the

said complainant on 2.7.99. He categorically denied that the said connection was given to the complainant after the connection of Jenifer Mendes was disconnected. He also denied the suggestion that even on 5.7.99 free tag was not available to give the connection to the complainant. P.W.5 Dhube confirmed what P.W.4 Naik had stated. P.W.5 stated that on 2.7.99 P.W.4 Naik instructed him to look into the telephone connection of the complainant and having found that there was a tag free he gave connection to the complainant. He also denied the suggestion that the telephone connection of Jenifer Mendes was disconnected in order to give the connection to the complainant. P.W.6 Kamlakar Naik who was a Lineman working under the accused had stated that there were two tags but the same were faulty and he had reported the fact to the accused. He further stated that he had told the accused that two tags were available and they were faulty and the accused had not given him any instructions. There is total silence on the part of P.W.6 K. Naik as well as the accused whether the said two tags which were faulty could not be repaired and connection given to P.W.1 Francis. In case the telephone of Jenifer Mendes was disconnected and P.W.1 was given the connection, the accused could certainly have examined the said Jenifer Mendes in support of the said plea. Moreover, one does not know as to how Jenifer Mendes continues to have a telephone connection under No.276423 even on 6.2.03 as reflected in one of the documents produced by the accused, in case the same was

disconnected to be given to P.W.1 Francis. On the basis of the evidence of P.W.4 Vinod Naik, S.D.E. and P.W.5 Dhube, the J.T.O. ,it is not possible to accept the defence version that P.W.1 Francis was given the connection either because he had complained against the accused or because there was pressure from C.B.I. As stated by P.W.5 Dhube, he had found a tag free and after he received instructions from P.W.4 Naik he gave a connection to P.W.1 Francis. The evidence of P.W.4 Naik and P.W.5 Dhube shows that the connection to P.W.1 Francis was being delayed by the accused only with a view to extract some money from him, in order to give the same. Since a free tag was available and after the raid the accused was arrested, P.W.1 Francis was bound to get the connection, he having completed all the formalities. In other words, it is the accused, who was acting as obstacle and delaying the shifting of the phone, and, once the obstacle was removed, P.W.1 Francis was bound to get the connection by shifting of his telephone.

19. Admittedly, the accused was caught with the tainted money in his hand and the only explanation given by the accused is that he had gone to the house of P.W.1 Francis to take a loan from him. If the accused had gone to take a loan, the accused has not explained as to why he initially had hesitated. If it was a loan, the accused would have accepted and thanked P.W.1 Francis and returned back to his office. It is not that public servants are expected to take loans from

private individuals without taking prior permission from their superiors, more so, when they have official dealings with such persons. The entire conversation between the accused and P.W.1 Francis which has been admitted by the accused shows that the accused had accepted the said amount of Rs.2000/- as a reward for hastening the process of shifting the connection which P.W.1 Francis was very much in need of. The said conversation showed that all that the accused wanted was to convey to P.W.1 Francis that he should not think he was taking the money forcibly but P.W.1 Francis was giving the same willingly and that he also should not feel that the money was being given to get the said connection. Apart from the said initial hesitation, on the part of the accused, the fact remains that the accused did accept the said money as earlier demanded by the accused and reduced by negotiations. It is also true that the accused did not pocket the same at once, but held it in his hand for some time. The acceptance of money by the accused though with initial hesitation was complete in all respects. The explanation put forward by the accused that he had taken Rs.2000/- as a loan, cannot at all be accepted. The theory of loan was destroyed by the accused even before he had put it forward by bringing out in cross-examination the conversation between the accused and P.W.1 Francis. A public servant is certainly not expected to take a loan from persons having official dealings with such public servants. The said plea of the amount being taken as loan does not at all appear to be plausible

and therefore has got to be rejected.

20. Moreover, Section 20 of the Prevention of Corruption Act, 1988 deals with presumption where public servant accepts gratification other than legal remuneration. Sub-Section (1) thereof provides that where, in any trial of an offence punishable under S.7 or Section 11 or clause (a) or clause (b) of sub-section (1) of S.13 it is proved that an accused person has accepted or obtained or has agreed to accept or attempted to obtain for himself, or for any other person, any gratification (other than legal remuneration) or any valuable thing from any person, it shall be presumed, unless the contrary is proved, that he accepted or obtained or agreed to accept or attempted to obtain that gratification or that valuable thing, as the case may be, without consideration or for a consideration which he knows to be inadequate (emphasis supplied).

21. The Supreme Court in the case of **Trilok Chand Jain v. State of Delhi** (1977 Cri.L.J. 254) stated that the degree and character of the burden of proof which is cast on an accused person to rebut the presumption raised thereunder, cannot be equated with the degree and character of proof which under section 101, Evidence Act rests on the prosecution. While the mere plausibility of an explanation given by the accused in his examination under section 342, Cr.P.C. may not be enough, the burden on him to negate the presumption

may stand discharged if the effect of the material brought on the record, in its totality, renders the existence of the fact presumed, improbable. In other words, the accused may rebut the presumption by showing a mere preponderance of probability in his favour; it is not necessary for him to establish his case beyond a reasonable doubt (emphasis supplied).

22. The learned Special Judge rightly drew the compulsory presumption of Section 20 of the Act against the accused, but wrongly observed that P.W.1 Francis had given the money on his own to the accused. As already stated the tenor of the evidence of P.W.1 Francis was more than clear: That the accused had initially demanded on 25.6.99 a sum of Rs.3000/- and plus which amount was reduced on 29.6.99 to Rs.2000/- and which was then handed over to the accused in his house. As already stated, in a situation like this, it was certainly not expected tat the accused would make a fresh demand either for Rs.3000/- or for Rs.2000/- while in the house of P.W.1 Francis. It was most normal and probable that after having first demanded and then agreed for a lesser sum that P.W.1 Francis would offer the said reduced amount to the accused without further demand. The presumption under Section 20 can certainly be rebutted, but it cannot be rebutted by a mere plea of the accused. The cross-examination of P.W.1 Francis shows that the said plea of the accused was apparently taken and it was taken by the accused after he had himself destroyed

the same. I say so because the accused himself vividly brought on record the conversation which took place between the accused and P.W.1. The said conversation could be reproduced in verbatim :-

" During the conversation, the accused said that "I was thinking forcibly, I would return. I admit that the accused stated during the conversation that he does not want any complaint later on. It is true that during that time on four occasions the accused wanted to return the money by stating that " I should pay later on. " I admit that the accused stated that I will tell that the accused had taken the money for giving connection. "

The said conversation, at the most, shows that there was some initial hesitation on the part of the accused to accept the amount given by P.W.1 Francis. All that the accused wanted to do was to create an impression that he had not taken it by force and that P.W.1 Francis should not feel that he was accepting the said sum as a favour to give a quick connection to P.W.1 Francis. Nevertheless the accused accepted the amount and that too consciously and therefore, in the facts and circumstances, the mandatory presumption against the accused was rightly drawn by the learned Special Judge. As far as the plea of the accused that he had taken the sum by way of hand-loan, was rightly rejected by the learned Special Judge. It would appear highly improbable that the accused, who had the work of P.W.1 Francis pending with him would go to

the extent of seeking a loan from him. In this context reference could be made to the case of **State of Madras v. Vaidyanatha Iyer (**A.I.R. **1958 S.C. 61) wherein the** Hon'ble Supreme Court has reiterated the principle that " Where it is proved that a gratification has been accepted, then the presumption shall at once arise under the section. It introduces an exception to the general rule as to the burden of proof in criminal cases and shifts the onus on to the accused. It may here be mentioned that the legislature has chosen to use the words 'shall presume' and not 'may presume', the former a presumption of law and latter of fact. Both these phrases have been defined in the Indian Evidence Act, no doubt for the purpose of that Act, but S.4 of the Prevention of Corruption Act is in pari materia with the Evidence Act because it deals with a branch of law of evidence e.g., presumptions, and therefore should have the same meaning. Again the Supreme Court in the case of **Madhukar Bhaskarrao Joshi v. State of Maharashtra (**A.I.R. **2001 S.C. 147) has s**tated that: "Once the prosecution established that gratification in any form – cash or kind – had been paid or accepted by a public servant the Court is under a legal compulsion to presume that the said gratification was paid or accepted as a motive or reward to do (or forbear from doing) any official act. The premise to be established on the facts for drawing the presumption is that there was payment or acceptance of gratification. Once the said premise is established the inference to

be drawn is that the said gratification was accepted ' as motive or reward ' for doing or forbearing to do any official act. “

23. Again in the case of **M. Narsinga Rao v. State of Andhra Pradesh (**A.I.R. **2001 S.C. 318)** the Supreme Court (a Bench of three Judges) has stated that the said presumption under S.20(1) of the Prevention of Corruption Act is compulsory and not discretionary and that the said legal presumption is to be understood as in terrorum i.e. In tone of a command that it has to be presumed that the accused accepted the gratification as a motive or reward for doing or forbearing to do any official act and the only condition for drawing such a legal presumption under S.20 is that during trial it should be proved that the accused had accepted or agreed to accept any gratification.

24. As already stated, the presumption cannot be rebutted by the accused by taking belatedly a plea that the money was given to him by way of a hand loan. This has been stated by the Supreme Court in the case of **Trilok Chand Jain v. State of Delhi (1977** Cri.L.J**. 254)** by stating that the mere plausibility of an explanation given by the accused in his examination under S.342 Cr.P.C. may not be enough, though the burden on him to negate the presumption could be discharged by bringing materials on record in its totality to render the existence of the fact presumed, improbable. The latter is not the

case at hand. It has also been submitted on behalf of the accused that the accused had shown his willingness not to accept the said amount, but as already stated the accused might have shown some hesitation in the beginning, but the fact remains that eventually after having said all that the accused wanted to say, the accused had accepted, and consciously, the said amount in his hand when the accused was caught by the raiding party. In a situation like ours, the Hon'ble Supreme Court in the case of **State of A.P. v. V. Vasudeva Rao [(2004)** 9 S.C.C. **319]** had found the plea of the accused that the money was received towards the repayment of loan advanced to the complainant by him incredible. Therefore the said plea of the accused that he had taken a hand loan from P.W.1 Francis has got to be rejected.

25. Another submission made on behalf of the accused is that on the failure of the raid on 29.6.99 another complaint ought to have been recorded from P.W.1. I am not inclined to accept the said submission for criminal law is set in motion but once, and having been set in motion by recording of the complaint on 29th June, 1999, there was no need for recording a fresh complaint on 30th June, 1999. The case of **Vishnu Kondaji Jadhav v. State of Maharashtra (1994 Cri. L.J. 1579)** is clearly inapplicable to the facts of the case.

26. In view of the above, I find no merit in this appeal. The

conviction recorded against the accused cannot be faulted. No submission has been made as regards the sentence. Consequently the appeal filed by the accused is hereby dismissed. The accused to surrender to the learned Special Judge, to undergo the sentence within thirty days.

N. A. BRITTO, J.

sl.